

## Fiscal Note for Proposed Permanent Rules for Drug Testing Requirements

**Agency:** Social Services Commission  
NC Department of Health and Human Services (DHHS),  
Division of Social Services (DSS), Economic and Family Services

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**Rule Citation:** 10A NCAC 73A .0101-.0108 (See Appendix for text of proposed rules.)

**Statutory Authority:** Session Law 2013-417, Sec. 4 and as amended by Session Law 2014-115

**Summary of Impact:** Federal Impact: None  
State Impact: Yes  
Local Impact: Yes  
Substantial Economic Impact: No

### Purpose of Rules:

Session Law 2013-417 (HB 392) Section 4, as amended by Session Law 2014-115, requires a drug test to screen each applicant or recipient of Work First Program assistance for whom there is a reasonable suspicion that the individual is engaged in the illegal use of controlled substances. This change further ensures that Work First Program cash assistance is used in a manner consistent with the purposes of Temporary Assistance for Needy Families (TANF), while serving to promote the integrity of the Program and the responsible stewardship of public funds. Permanent rules must be adopted to fully implement this new eligibility requirement. Table 1 below presents the estimated rule impact, assuming a June 1 effective date.

**Table 1. Summary of Estimated Impact from New Requirement over Next Five Years**

ITEM	SFY 2014-15	SFY 2015-16	SFY 2016-17	SFY 2017-18	SFY 2018-19	SFY 2019-20
<b>State Impact</b>						
Drug Test Cost		\$136,800	\$136,800	\$140,600	\$140,600	\$140,600
NC FAST	\$125,750					
<b>State Total</b>	<b>\$125,750</b>	<b>\$136,800</b>	<b>\$136,800</b>	<b>\$140,600</b>	<b>\$140,600</b>	<b>\$140,600</b>
<b>Local Government Impact</b>						
County DSS Cost for processing		\$77,500	\$77,500	\$79,700	\$79,700	\$79,700
<b>Applicants/Participants Impact</b>						
Foregone Work First Program Benefits		unquantified	unquantified	unquantified	unquantified	unquantified
Cost of Retesting		unquantified	unquantified	unquantified	unquantified	unquantified
<b>Public Impact</b>						
Benefit from Better Stewardship of Public Funds		unquantified	unquantified	unquantified	unquantified	unquantified

**Background:**

Work First is North Carolina's TANF program. The program provides employment services, short term training, cash assistance and other services to help those who apply and meet eligibility requirements move toward self-sufficiency. The Department of Health and Human Services has been mandated to require a drug test screening of Work First applicants or recipients where there is reasonable suspicion of engagement in the illegal use of controlled substances.

Since 1997 the Department has required all case workers to employ a screening tool for drug and alcohol use, known as the Drug Assessment and Screening Test (DAST-10) among applicants or recipients. Those individuals flagged during the screening were statutorily required to seek and complete treatment in a satisfactory manner. Session Law 2013-417 (HB 392) Section 4, as amended by Session Law 2014-115 has not altered this requirement.

Session Law 2013-417 (HB 392) Section 4, as amended by Session Law 2014-115 however, added that those individuals flagged by the screening and those with a conviction, arrest, or outstanding warrant for illegal controlled substances within the last three years undergo a drug test paid for by the state. Applicants or recipients would be entitled to a retest, if they so choose, at their own expense. The new requirement is for all adults included in the Work First household to undergo the test, however any dependents under the age of 18 and non-parent caretakers would be exempt. The results of the test are confidential, subject to HIPAA, and the agency would not release them to law enforcement agencies.

Those applicants or recipients with a positive drug test result would be ineligible for the program for one year. Those with a subsequent positive test would be ineligible for three years. However, if the applicants or recipients show a successful completion of or participation in a drug or alcohol treatment program, they could reapply for the program within 30 days from the last drug test and submit to another test at their expense.

**Economic Impact:****State**

This analysis provides an estimate of the number of individuals that may be drug tested, based on the best data available at this time.

In State Fiscal Year (SFY) 2011-2012, the Work First Program received a total of 71,298 applications and recertification (redetermination of Program eligibility) of active cases. This figure includes applications and recertification cases for individuals who were denied, withdrawn, and/or approved for the Work First Program. As a condition of eligibility an individual must verbally complete the DAST-10 questionnaire. The DAST-10 is used to assess for a substance use disorder and requires referral if a certain level is attained. Based on data from the North Carolina Division of Mental Health, Developmental Disabilities and Substance Abuse Services (DMH/DD/SAS), less than four percent (3.9%) of the applicants and recipients on active cases were referred for further assessment of potential substance abuse, or about 2,781 individuals.

According to state demographic data, there were 9,762,822 individuals in North Carolina by the end of SFY 2011-12.<sup>1</sup> American Community Survey data shows that during the 2009-2013 period there were on average 1,197,807 families with related children under 18 years of age and that 20.7% of them were under the poverty level, or close to 250,000 families.<sup>2</sup> Data from the North Carolina Department of Corrections for SFY 2011-2012 shows 0.27% of the general population (age 18 and above) had drug related convictions. Assuming that this percentage holds for the population applying to the Work First Program and that there is one parent per family, this could equate to an additional 670 families with drug related convictions potentially applying for Work First. This number could be higher since a number of these families may have two parents in them, however that number is not known.

Based on the two calculations of the potential population subject to the drug test, and assuming an average annual growth in the affected population of 1% per year (based on the growth in general NC population according to state demographic data),<sup>3</sup> the agency estimates about 3,600 to 3,700 applicants and recipients would be subject annually to the drug test.

Based on information from other states with a drug testing requirement, the cost of a basic five panel drug test ranges from \$38.00 to \$94.00. This cost may or may not remain constant for the time span used in this analysis and is dependent on the vendor with whom the agency will contract. For the purpose of this fiscal note, we assume a constant cost of \$38.00; however, this cost could be higher. Based on this assumption, the agency estimates that the drug test costs to the state for the initial drug test would be about \$134,000 to \$141,000 per year when testing the 3,600-3,700 Work First applicants or recipients who are referred due to DAST-10 score or drug conviction within three years. The confirmation drug test may have an additional cost. There is no data currently available to estimate the potential cost to the state.

The selected vendor is expected to handle all drug testing requirements within the funds allocated, and those tested would not have to pay out of pocket for testing, unless they request a retest. This analysis does not consider that Work First households may cycle on and off of the program several times in a 12-month period, and therefore have the potential to be referred for a new drug test. An applicant or recipient must complete the drug test requirement whenever the DAST-10 level is attained or when there has been a drug conviction within 3 years.

It is anticipated that the automated case management system, North Carolina Families Accessing Services through Technology (NC FAST) will undergo a system enhancement to support this new requirement. An estimated \$125,750 has been designated to fund the system enhancement for drug testing. The change request estimate includes 1,006 hours for the following: designers, build, business,

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<sup>1</sup> NC Office of State Budget and Management. Population Estimates and Projections. Annual County Population Totals, 2010-2019.

[http://www.osbm.state.nc.us/ncosbm/facts\\_and\\_figures/socioeconomic\\_data/population\\_estimates/demog/cou\\_nytytotals\\_2010\\_2019.html](http://www.osbm.state.nc.us/ncosbm/facts_and_figures/socioeconomic_data/population_estimates/demog/cou_nytytotals_2010_2019.html)

<sup>2</sup> U.S. Census Bureau. 2009-2013 American Community Survey 5-Year Estimates. Poverty Status in the Past 12 Months of Families, North Carolina (Table S1702).

[http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_13\\_5YR\\_S1702&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_13_5YR_S1702&prodType=table)

<sup>3</sup> NC Office of State Budget and Management. Population Estimates and Projections. Annual County Population Totals, 2010-2019.

[http://www.osbm.state.nc.us/ncosbm/facts\\_and\\_figures/socioeconomic\\_data/population\\_estimates/demog/cou\\_nytytotals\\_2010\\_2019.html](http://www.osbm.state.nc.us/ncosbm/facts_and_figures/socioeconomic_data/population_estimates/demog/cou_nytytotals_2010_2019.html)

testing and specialists. Any future costs, after year one will be minimal and will be covered in the eligibility determination operation and maintenance phase for NC FAST.

The agency would cover the estimated cost of the NC FAST update, as well as drug testing costs with the \$655,749 that it was appropriated by the General Assembly to last through SFY 2017-18.

There may be additional indirect impacts to the state. This drug testing requirement would detect and/or possibly deter and remediate substance use issues that impede self-sufficiency. The number of individuals with a substance use disorder who receive public benefits could be reduced. However, there may be an indirect cost to state or private agencies as the affected families seek other resources to supplant the loss of benefits and services resulting from this requirement.

### **Local/County**

Work First Program staff may average an additional 45-60 minutes of administrative time per case for those cases subject to substance use screening and drug testing. This additional time is absorbed into their normal workday/week and therefore not an added budgetary expenditure. However, the additional time county staff would spend per case due to the proposed requirement does have an opportunity cost as that time could be used by staff to carry out other tasks. The value of that foregone time is estimated using the average hourly total compensation of county level staff of \$22. The hourly staff compensation was computed by using the average salary of county income maintenance caseworker 1, of \$29,300, from the UNC School of Government January 2014 local government salaries database<sup>4</sup> and staff benefits of 53% of salary (including leave, social security, retirement, health insurance, and longevity pay), assumed similar to state employees.<sup>5</sup> Therefore, the total cost to local government staff is estimated at \$77,500 per year.

### **Applicant or Recipient**

Any applicant or recipient who chooses to retest will be responsible for the cost of the retest, which could be \$38 plus or minus dependent upon the provider selected by the individual. It is impossible to determine the number of retests, but it is expected to be minimal.

Additionally, the rule would impact the benefit applicants to and participants in the program receive. This benefit is dependent on the family structure; in this fiscal year, it has ranged from \$236 per month for a family with one parent and one child to \$473 for a family with one parent and 11 children. The payment for families where the parent is not entitled to a benefit has been \$13-55 lower, depending on the number of children. It is important to note that the proposed requirement would not affect the benefits for minors, unless the parents refuse to submit to the DAST-10 screening or the drug test, or they tamper with the drug test. In such a case, the entire household would be ineligible for benefits and would stand to lose \$236 to \$473 per month.

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<sup>4</sup> UNC School of Government, Counties Salaries Index, updated January 2014. Available at: <http://www.sog.unc.edu/node/518>

<sup>5</sup> NC Office of State Human Resources. "State of North Carolina 2014 Compensation & Benefits Report," Table 1. Available at: <http://www.oshr.nc.gov/Guide/CompWebSite/2014%20compensation%20&%20benefits%20report.pdf>

For SFY 2012-2013, 176 cases were denied, terminated or benefits reduced due to noncompliance with the current substance use policies. It is expected that this number will increase with the new requirement for drug testing. However, there is no accurate method to determine how many cases related to the estimated 3,600-3,700 individuals who would be required to undergo the test would be denied, terminated or see reduced benefits as a result of the new testing requirement. Furthermore, the estimation is complicated by the fact that the time period an individual remains denied or terminated varies based on the sanction and, as mentioned above, the reduced benefit is based on family structure. Given all the unknowns, it is difficult to estimate the foregone benefits to program applicants and participants, and therefore the funds that would not be disbursed by the state. Nevertheless, the agency does not expect the loss of benefits to be high enough for this rule to create a substantial economic impact, defined as \$1 million or greater in a 12-month period.

10A NCAC 73A .0101 is proposed for adoption as follows:

## **CHAPTER 73 – CONTROLLED SUBSTANCES**

### **SECTION .0100 - GENERAL**

#### **10A NCAC 73A .0101 SCOPE AND PURPOSE**

Public Law 104-193, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 prohibits the provision of Temporary Assistance for Needy Families assistance to individuals who have a drug related felony conviction occurring on or after August 22, 1996. The purpose of the rules in this Subchapter is to set forth requirements for the substance use screening and drug testing of Work First Program applicants and recipients.

*History Note: Authority G.S. 108A-25.2; 108A-29.1; 143B-153;  
Eff. June 1, 2015.*

10A NCAC 73A .0102 is proposed for adoption as follows:

#### **10A NCAC 73A .0102 DEFINITIONS**

The following definitions apply to this Chapter:

- (1) “Controlled substance” means a drug, substance or immediate precursor as defined by G.S. 90-87(5).
- (2) “Drug test” means the production and submission of a biochemical assay by an applicant or recipient for chemical analysis to detect illegal use of drugs. Such chemical analysis shall meet the requirements of the Controlled Substance Examination Regulation Act, Chapter 95, Article 20 of the General Statutes.
- (3) “Illegal use of drugs” means the unlawful use of controlled substances.
- (4) “Intentional Program Violation” means any action by a Work First applicant or recipient to knowingly, willfully, and with deceitful intent, make a verbal or written false statement to obtain or attempt to obtain benefits for which they are not eligible, or hide or withhold information to obtain benefits for which they are not eligible.
- (5) “Reasonable suspicion” means a sufficient basis to believe the illegal use of a controlled substance may have occurred, and such reasonable suspicion shall be established only by one of the following:
  - (a) a score of three (3) or above on the verbal screening questionnaire, the Drug Abuse Screening Test (DAST-10), or
  - (b) a criminal conviction relating to an illegal controlled substance within the past three years.
- (6) “Substance use screening” means a verbal questionnaire approved by the Division of Social Services to determine a potential for a substance use disorder.
- (7) “Applicant or recipient” for the purposes of drug testing shall not mean:
  - (a) a child only case, or
  - (b) a dependent child under age 18.

*History Note: Authority G.S. 108A-29.1; 143B-153;  
Eff. June 1, 2015.*

10A NCAC 73A .0103 is proposed for adoption as follows:

**10A NCAC 73A .0103 DRUG TESTING**

The county director shall require a basic five panel drug test for applicants and recipients of Work First Family Assistance where there is a reasonable suspicion the applicant or recipient is engaged in the illegal use of controlled substances. The drug test shall identify the illegal use of the following controlled substances:

- (1) cannabinoids;
- (2) cocaine;
- (3) methamphetamines/amphetamines;
- (4) opiates; and
- (5) phencyclidine.

*History Note: Authority G.S. 108A-29.1; 143B-153;  
Eff. June 1, 2015.*



10A NCAC 73A .0104 is proposed for adoption as follows:

**10A NCAC 73A .0104 DRUG TESTING REQUIREMENTS**

(a) The Drug Abuse Screening Test (DAST-10) shall be completed as a condition of eligibility for the Work First program by the following:

- (1) an applicant or recipient of the Work First Program; or
- (2) an applicant or recipient, who has been previously disqualified because of an Intentional Program Violation.

(b) If the applicant or recipient refuses to complete the DAST-10 the entire household unit shall be ineligible for cash assistance.

(c) If reasonable suspicion exists, the individual shall submit to a drug test at the Division of Social Services' expense with the Division of Social Services' contracted vendor, as required by G.S. 108A-29.1.

(d) If an applicant or recipient declines to submit to the drug test or fails to complete the drug test the entire household unit shall be ineligible for cash assistance.

(e) If there is evidence that an applicant or recipient substitutes, adulterates or tampers with the drug testing the entire household unit shall be ineligible for cash assistance.

*History Note: Authority G.S. 108A-29.1; 143B-153;  
Eff. June 1, 2015.*

10A NCAC 73A .0105 is proposed for adoption as follows:

**10A NCAC 73A .0105    TECHNIQUES AND METHODS**

(a) The analysis of drug test specimens shall be conducted by a laboratory licensed by the NC Department of Health and Human Services and certified by the Substance Abuse and Mental Health Services Administration (SAMHSA).

(b) Controlled substances or metabolites of a controlled substance shall be tested and analyzed using approved analytical techniques or methods, as follows:

- (1) immunoassay;
- (2) thin-layer chromatography;
- (3) gas chromatography;
- (4) mass spectroscopy;
- (5) high performance liquid chromatography; or
- (6) spectroscopy.

(c) Results of the drug test analysis shall be expressed as equivalent to nanograms by weight of a controlled substance or metabolite, or a controlled substance per milliliter.

(d) The drug test threshold values shall meet the cutoff levels contained in the Mandatory Guidelines for Federal Workplace Drug Testing Programs as adopted by SAMHSA and identified in the chart below.

<b>Initial Test Analyte</b>	<b>Initial Test Cutoff Concentration</b>	<b>Confirmatory Test Analyte</b>	<b>Confirmatory Test Cutoff Concentration</b>
Marijuana Metabolites	50 ng/mL	THCA1	15 ng/mL
Cocaine Metabolites	150 ng/mL	Benzoyllecgonine	100 ng/mL
Amphetamines AMP/MAMP	500 ng/mL	Amphetamine Methamphetamine	250 ng/mL 250 ng/mL
Opiate Metabolites Codeine/Morphine	2000 ng/mL	Codeine Morphine	2000 ng/mL 2000 ng/mL
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL

(e) All confirmatory positive test results shall be reviewed by a Medical Review Officer.

*History Note:    Authority G.S. 108A-29.1; 143B-153;  
Eff. June 1, 2015.*

10A NCAC 73A .0106 is proposed for adoption as follows:

**10A NCAC 73A .0106    CONFIDENTIALITY**

(a) A drug test given under this Section shall be confidential and consistent with the HIPAA Privacy Rule appearing in 45 CFR Sections 160 and State Law.

(b) The drug test results, medical history, or medications taken by the individual shall be a confidential record unless its disclosure is otherwise authorized by law or by written consent from the applicant or recipient.

(c) The county departments of social services shall implement administrative, physical and technical safeguards to avoid unauthorized use or disclosure of drug test results.

*History Note:     Authority G.S. 108A-29.1; 143B-153;  
                         Eff. June 1, 2015.*

10A NCAC 73A .0107 is proposed for adoption as follows:

**10A NCAC 73A .0107 REASONABLE ACCOMODATION**

(a) Reasonable accommodations shall be provided to allow individuals with disabilities to comply with the drug testing requirement in accordance with the American Disability Act of 1990, as amended in 2008 (P.L. 110-328).

(b) An individual who fails to complete the drug test within twelve (12) business days of the referral date and provides documentation of an incapacity may receive additional time to complete the drug test.

*History Note: Authority G.S. 108A-29.1; 143B-153;  
Eff. June 1, 2015.*

10A NCAC 73A .0108 is proposed for adoption as follows:

**10A NCAC 73A .0108   NOTICES**

(a) At application and at redetermination of eligibility for cash assistance, each household shall receive notice of the rights and responsibilities, and consequences for drug testing.

(b) At the time of testing and upon receipt of a confirmed positive drug test result, the individual shall be notified of the rights and responsibilities and consequences for a retest.

(c) Upon receipt of a confirmed positive test result, the county department of social services shall refer the individual to a qualified professional in substance abuse as defined in Rule 10A NCAC 27G .0104(19).

*History Note:     Authority G.S. 108A-29.1; 143B-153;  
                      Eff. June 1, 2015.*